



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO WOODHAVEN WATER COMPANY, INC. FOR WOODHAVEN SHORES WATER SYSTEM

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Woodhaven Water Company, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Facility" means the Woodhaven Shores Water System located in Quinton, New Kent County, Virginia.
6. "Ground Water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.
7. "Order" means this document, also known as a Consent Special Order.
8. "Permit" means the Ground Water Withdrawal Permit #GW001000.
9. "Regional Office" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "Woodhaven Water Co." means the Woodhaven Water Company, Inc. the owner and operator of the Woodhaven Shores Water System located in Quinton, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. The Woodhaven Water Co. owns and operates the Woodhaven Shores Water System (Facility) located in Quinton, Virginia. Quinton, Virginia is located in New Kent County which is part of the Eastern Virginia Ground Water Management Area (9 VAC 25-600-10 *et seq.*)
2. Woodhaven Water Co. was issued Ground Water Withdrawal Permit #GW001000 (Permit) on October 1, 1995, and the Permit expired on October 1, 2005. The Permit allowed the Woodhaven Water Co. to withdraw 50 million gallons of groundwater per year (50,000,000); and allows the Woodhaven Water Co. to withdraw no more than 5,009,900 gallons per month.
3. On May 12, 2005, a pre-application meeting was held with the Woodhaven Water Co. DEQ requested that the Woodhaven Water Co. submit a renewal application including an aquifer test plan and documentation of existing pump intake depth in order to process the Permit renewal.
4. Regulation 9 VAC 25-610-90.D requires a permittee to submit a new permit application at least 270 days before the expiration of an effective permit unless permission for a later date has been granted by the board; and 9 VAC 25-610-90(E) requires the permittee to immediately submit required additional information in order to complete the permit application. Va. Code § 62.1-256 and 9 VAC 25-610-380 requires any person withdrawing ground water for any

purpose, anywhere in the Commonwealth, to furnish to the DEQ such information that may be necessary to carry out its duties under the statute.

5. On November 14, 2005, DEQ issued a Warning Letter (WL) to the Woodhaven Water Co. The WL cited the expiration of the Permit on October 1, 2005; failure to submit a new application at least 270 days before the expiration of the effective Permit; and failure to submit an aquifer test plan (ATP) in a timely manner as required by DEQ.
6. On November 16, 2005, DEQ received an incomplete Permit application from Woodhaven Water Co. DEQ requested additional information to complete the application. Woodhaven Water Co. requested extensions and the extensions were granted. The Permit renewal application remains incomplete.
7. On September 24, 2008, DEQ issued a Notice of Violation (NOV) to Woodhaven Water Co. The NOV cited: 1) the expiration of the Permit on October 1, 2005; 2) that DEQ records indicate that the Woodhaven Water Company has continued to withdraw ground water from the Woodhaven Shores Water System without a permit, in apparent violation of Va. Code § 62.1-258 and 9 VAC 25-610-40; and 3) that DEQ has not received a complete renewal application for Ground Water Withdrawal Permit No. GW001000 from Woodhaven Water Company, despite repeated requests for information necessary to complete the application, in apparent violation of 9 VAC 25-610-90(D), 9 VAC 25-610-90(E), Va. Code § 62.1-256 and 9 VAC 25-610-380.
8. Va. Code § 62.1-258 and 9 VAC 25-610-40 states that no person shall withdraw, attempt to withdraw, or allow the withdrawal of ground water within a ground water management area, except as authorized pursuant to a ground water withdrawal permit, or as excluded in Va. Code § 62.1-260 and 9 VAC 25-610-50.
9. On December 18, 2008, the Woodhaven Water Co. met with DEQ to discuss resolution of the NOV.
10. DEQ records show that the Woodhaven Water Co. exceeded the annual permitted withdrawal limit in 2005, by withdrawing 56,234,100 gallons and operated without a permit in 2006, by withdrawing 57,080,200 gallons; in 2007 by withdrawing 49,024,000 gallons and in 2008, by withdrawing 53,220,500 gallons.
11. In order for Woodhaven Water Co. to return to compliance, DEQ staff and representatives of Woodhaven Water Co. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Woodhaven Water Co., and Woodhaven Water Co. agrees to:

1. Perform the actions describe in Appendix A of this Order; and
2. Pay a civil charge of **\$29,623** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
August 10, 2011	\$5,000 or balance
November 10, 2011	\$5,000 or balance
February 10, 2012	\$5,000 or balance
May 10, 2012	\$5,000 or balance
August 10, 2012	\$5,000 or balance
November 10, 2012	\$4,623

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by Woodhaven Water Co., and the entire remaining balance of the civil charge shall be immediately due and owing. Woodhaven Water Co. shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
4. All payments shall be made by check, certified check, money order, or cashiers check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

5. Woodhaven Water Co. shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Woodhaven Water Co., for good cause shown by Woodhaven Water Co., or on its own motion after pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility ; or (3) taking subsequent action to enforce the terms of this Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Woodhaven Water Co. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Woodhaven Water Co. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the Order.
5. Woodhaven Water Co. declares it has received fair and due process under the Administrative Process Act and the Virginia State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.
6. Failure by Woodhaven Water Co. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Woodhaven Water Co. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Woodhaven Water Co. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Woodhaven Water Co. shall notify the DEQ Regional Director verbally within 24 hours and in

writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Woodhaven Water Co. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Woodhaven Water Co. Nevertheless, Woodhaven Water Co. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Woodhaven Water Co. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Woodhaven Water Co.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Woodhaven Water Co. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Woodhaven Water Co. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Woodhaven Water Co. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Woodhaven Water Co. to this document. Any documents to be submitted pursuant to the Order shall also be submitted by a responsible official of Woodhaven Water Co.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Woodhaven Water Co. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of August, 2011.



Michael P. Murphy, Regional Director
Piedmont Regional Office

Woodhaven Water Company voluntarily agrees to the issuance of this Order.

Date: 3-23-2011 By: [Signature], President
(Person) (Title)

Commonwealth of Virginia

City/County of New Kent

The foregoing document was signed and acknowledged before me this 23rd day of

March, 2011 by William B. Chandler, who is
(name)

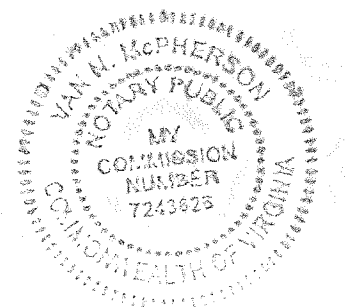
President of Woodhaven Water Company, on behalf of Woodhaven Water Co..
(title)

[Signature]
Notary Public

7243626
Registration No.

My commission expires: November 30, 2013.

Notary seal:



APPENDIX A

Woodhaven Water Company shall:

1. **On or before December 10, 2011**, install the water reading meters at all of connections to the Woodhaven Shores Water System.
2. **On or before June 10, 2012**, conduct and submit a **report of a well water system audit** to DEQ. The audit will be based on at least 6 consecutive months of collection and evaluation of metered data for all connections. The audit report shall include an evaluation of:
 - The volume of unaccounted for water loss, (withdrawn by the wells but not used by customers);
 - Corrective actions taken or planned for reducing the loss of water through the distribution system, and as necessary, the efforts toward securing funding/financial assistance to address water loss;
 - The total amount and percentage of the withdrawn water being used by customers; the average amount being used per customer and; identifying customers that have elevated water usage due to use habits or leaks within the private line or leaking fixtures and appliances.
 - Corrective actions taken or planned for those customers that show an elevated water usage. [Corrective actions taken are to be aimed at identifying and reducing the cause(s) of the elevated water usage by helping the customer identify and repair leaking appliances such as toilets or sinks, or leaking water lines, etc.; and by identifying and reducing high water use habits such as excessive outdoor water use, or wasteful water use habits, etc. as practicable.]
3. **By December 10, 2012**, submit to DEQ an **annual audit report** which will include the information as described in #2 above and status updates. Submit annual audit reports until the Permit application has been deemed complete.
4. Revise, expand, and **resubmit** the Water Conservation and Management Plan that was submitted to DEQ on November 16, 2005 with the original permit application, to include all of the customer meters, water audit practices, and other needed issues specific to your water system. Finalize and submit **a complete and an approvable** Water Conservation and Management Plan **once the water audit information is available, but no later than December 10, 2012**. (Woodhaven Water Company shall work with DEQ staff during the preparation of the Plan to insure that an approvable Plan will be submitted by no later than December 10, 2012.)
5. Complete and submit an **approvable** Permit application no later than **December 10, 2012**. (Woodhaven Water Company shall work with DEQ staff during the permit

application process to insure that the Permit application is complete and submitted by December 10, 2012.)

6. Continue submitting quarterly progress reports, on activities undertaken to submit a complete Permit application, until the Permit application is deemed complete. The next quarterly progress report is due on **January 10, 2011**. The successive reports will be due on **April 10, July 10, and October 10** of each year, until the permit application is complete.
7. Respond to all Notices of Deficiency or information requests from DEQ with respect to the Water Conservation and Management Plan and the Permit application in accordance with the terms and timelines provided in each notice.
8. Submit all requirements of Appendix A of this Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
(804) 527-5079
(804) 527-5106-F
ecakers@deq.virginia.gov